Court No.2

IN THE HIGH COURT OF UTTARANCHAL NAINITAL.

Appeal from Order No. 280 of 2001
(Old no. 102 of 1992)

Smt. Kamal Devi
Wife of late Sri Bhaktawar Singh,
R/o Gumaniwala, Shyampur,
District Dehradun. ..... Claimant/Appellant.

Versus

1. Union of India through Secretary of
   Defence, New Delhi,
2. Commanding Officer,
   6th M.T.R.T. Brigade Signal Swamitwa
   One Ton, 86-C 43439 N 33 C/o 56 A.P.O.,
   New Delhi,
3. Rajendra Singh S/o Sri Mahesh Chandra Yadav,
   Ghurai, P.S. Danda Har, District Mainpuri,
   Driver One Ton 86 C-43439 N 33, 6th M.T.R.T.
   Brigade Signal Unit Raiwala C/o 56 A.P.O., New Delhi.
4. Bhagwat Semwal S/o Sri Khila Nand Semwal,
   R/o Pandey Plot Village Shyampur,
   Khadari Driver Vikram URM 8997.
5. Om Prakash Bhalla S/o Lashu Mall Bhalla,
   R/o Village Shyampur, Khadari,
   Owner Vikram URM 8997, district Dehradun,
6. Manager, Oriental Fire and General Insurance
   Company, Rishikesh, Dehradun,
   Insurer of Vikram No. URM 8997.

..... Respondents.

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Sri Rajendra Dobhal, learned counsel for the appellant
Sri Rajeev Bisht, learned standing counsel for respondents 1 to 3,
Sri Anurag Bisasria and Ms. Menka Tripathi, learned counsel for the respondent No.5.
Sri Tanveer Alam Kha, learned counsel for the respondent No.6.

Date: 13th September, 2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This is an appeal preferred by the claimant under Section 173 of the Motor Vehicles Act, 1988 for

enhancement of the amount of award passed by the Motor Accident Claims Tribunal/III Addl. District Judge, Dehradun on 23.10.1991 in Motor Accident Claim Petition No. 406 of 1988, Smt.Kamla Devi versus Union of India and others, by which the claim petition filed by the claimant was allowed for compensation to the tune of Rs. 38,250/- against the Opp.party Nos. 1 & 2, Union of India & Commanding Officer, VI G.R.T.Brigade Signals, alongwith interest at the rate of 12% per annum from the date of filing of claim petition till the date of payment. It was also ordered by the Tribunal that out of the amount of Rs. 38,250/-, Rs. 7500/- which was paid by the Opp.party No.6-insurer of vehicle Vikram No. URM 8997 to the claimant under Sec. 92-A of the Motor Vehicles Act, shall be returned to the Opp.party No.6 by the opposite party Nos. 1& 2.

2- Brief facts giving rise to this appeal are that on 9-8-1988, at about 10.00 p.m. the deceased Kalu was coming from Raiwala to Rishikesh in Vikram No. URM 8998. At the end of culvert before the place known as Satya Narain, the Military vehicle No. 86-C-43439-N-33, being driven rashly and negligently by its driver coming from the opposite direction, came on its wrong side and struck the Vikram causing injury to the Vikram driver as well as to Kalu. Kalu was taken to the Distric Hospital, Rishikesh for treatment from where he was referred to Doon Hospital, Dehradun for better treatment. He succumbed to the injuries sustained in the said accident on 12-8-1988 at Doon Hospital. It was alleged in the claim petition that Kalu was 20 years old and he was doing the job of white washing and painting the houses from which he had a monthly income of Rs. 1500/-. The mother of the deceased, who was solely dependent upon the deceased, filed the claim petition

for compensation under Section 110-A of the Motor Vehicles Act amounting to Rs. 5,30,000/- on account of the death of deceased-Kalu.

3- The opposite parties contested the claim petition before the Tribunal. The Opp.parties Nos. 1 & 2, the Union of India and the Commanding Officer VI G.R.T.Brigade Signals filed their joint written statement denying the allegations of the claim petition. They stated that the driver of Vikram No. URM 8997 by driving the vehicle rashly and negligently struck the statonary Military Truck No. 86-C-43439-N-33. It was also pleaded that deceased Kalu was driving the Vikram rashly and negligently and hit with severe impact to the said stationary Military truck. He was also under the influence of liquor. It was also pleaded that the said Military truck was standing at the edge of the road on account of the failure of its lights and as soon as the Opp.party started checking the lights of the Military truck, the aforesaid Vikram came from the opposite direction driven with a high speed collided against the said stationary military truck. It was, however, admitted that two persons boarding in the said Vikram sustained injuries in the accident. The Opp.party No.3-driver of the Military truck in question in his written statement also denied the allegations of the claim petition. He alleged that the deceased was earning Rs. 150/- per month by Vikram driving. He further pleaded that the accident had taken place on account of the rash and negligent driving of said Vikram No. URM 8997. The Opp.party Nos. 4 & 5, driver and owner of said Vikram No. URM 8997 respectively, filed their separate written statements. They both also denied the allegations of the claim petition. They pleaded that the Military truck in question, which was being driven by its driver rashly and negligently, came on its wrong side

without any reason and dashed against the said Vikram. The Opp.party No.6-Oriental Fire & General Insurance Company in its written statement admitted the insurance of the vehicle Vikram No.URM 8997 at the time of accident. They also denied the allegations of the claim petition and asserted that the accident had taken place on account of rash and negligent driving of the said Military truck. On the pleadings of the parties, the Tribunal framed necessary issues and after recording evidence of the parties, oral and documentary, allowed the claim petition accordingly. Feeling Aggrieved, the claimant has come up in this appeal for enhancement of the amount of compensation.

4- The learned counsel for the claimant/appellant challenged the quantum of the impugned award on the grounds that the view taken by the learned tribunal that the deceased had not been working throughout the year is wrong and without any evidence. Further the Tribunal, in very wrong and arbitrary manner, calculated the dependency of the claimant on the deceased and has not held the notional income of the deceased and as such the impugned award is illegal. We have gone through the record of the case and perused the impugned judgment. The learned Tribunal framed as many as four issues in this case. The main issues are issue Nos. 1 & 2. Issue No.1 is related to rash and negligent driving of Military Truck (One Ton) No. 86-C-43439 N 33 due to which the said accident took place and the issue No.2 is related to rash and negligent driving of vehicle Vikram by the deceased himself as alleged by the Opp.party Nos. 1 & 2 due to which the said accident took place. The oppoisite party No.3 Rajendra Singh, who was driver of said Military truck, examined himself as D.W.1 before the Tribunal. In his cross-examination, he has admitted that he faced Court martial

proceedings in relation to this accident and rigorous imprisonment of 89 days was awarded to him in those proceedings. The claimant also produced Sri Bhagwat Prasad as P.W.3 and Sri Om Prakash as P.W.4 in support of her case. They stated on oath that they were present at the place of accident when the said accident had taken place. The learned Tribunal has rightly gave its finding and held that the accident took place due to rash and negligent driving by the driver of military truck No. 86-C-43439 N 33 in which deceased Kaloo- son of the claimant lost his life. The learned Tribunal rightly held that the opposite party No.1 is liable to pay the compensation and rightly exonerate the Oriental Insurance Company-insurer of the said Vikram from the liability.

5- The learned Tribunal in its finding on issue Nos. 3 & 4 held that in absence of any documentary evidence regarding the income of the deceased it can not be relied that the deceased was earning Rs. 1500/- per month which the claimant has alleged in the claim petition. We are of the opinion that the findings given by the learned Tribunal regarding the income of the deceased and dependency of the claimant on the deceased that the deceased would not have been able to provide more than Rs. 250/- per month to his mother after his marriage are wrong. Keeping in view the facts and circumstances of this case, we hold the notional income of the deceased Rs. 15,000/- per annum and after deducting one-third the amount, which is to be multiplied, comes to Rs. 10,000/- Applying the multiplier of '17' as provided in second schedule appended to Section 163-A of the Motor Vehicles Act, the amount of compensation comes to Rs. 10,000.00X17=1,70,000/-.

6- A sum of RS. 7500/- was paid by the Opp.party No.6-Oriental Fire & General Insurance Company of -the

insurer of vehicle Vikram No.URM 8997 under the provisions of Section 92-A of the Motor Vehicles Act, 1939 to the claimant. The Tribunal has rightly ordered that the said amount is to be deducted from the amount of total award and shall be payable by the Opp.party Nos. 1 & 2 to the Opp.party No.6- Oriental Insurance Company with interest. We further hold that Opp.party Nos. 1 & 2 shall also be liabel to pay interest on the amount of compensation at the rate of 9% per annum.

7- Thus, the appeal is allowed partly. We modify the impugned award to the extent that the claimant shall be paid Rs. 1,62,500/- (Rupees one lac sixty two thousand five hundred) only alognwith interest at the rate of 9% (nine per cent) per annum from the date of filing of the claim petition till the date of payment by the opposite parties Nos. 1 & 2.

(B.S.Verma, J.) **(P.C. Verma, J.)**

P.Singh
13.09.2004